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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MOSES SCOTT, individually and as  
12 estate administrator of the estate of  
13 Regina Kelly, deceased,  
14  
15 vs. Plaintiff,  
16 MERCK & CO., INC., et al.,  
17 Defendants.

CASE NO. 12cv2549-AJB (MDD)  
CASE MANAGEMENT ORDER  
REGULATING DISCOVERY  
AND OTHER PRETRIAL  
PROCEEDINGS

18 On February 4, 2013, a telephonic case management conference was held in  
19 the above captioned case. Appearing for Plaintiffs were Ryan Thompson and T.J.  
20 Pruess. Appearing for Defendants were Kenneth King, Alan Thoen, Steve Swinton,  
21 Doug Marvin, Paul Boehm, Amy Laurendeau and Kelsey Larson. After reviewing the  
22 joint discovery plan with counsel and good cause appearing,

23 **IT IS HEREBY ORDERED:**

24 1. A telephonic case management conference will be held **February 25,**  
25 **2013, at 3:00 p.m.** Counsel only are required to participate. *Counsel for Plaintiff is*  
26 *instructed to arrange a conference call and provide to the Court and all parties a dial-*  
27 *in number. The Court's dial-in information should be sent to*  
28 *efile\_dembin@casd.uscourts.gov.*

2. All fact discovery shall be completed on or before **January 6, 2014.**

1 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil  
2 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient  
3 period of time in advance of the cut-off date, *so that it may be completed* by the cut-off  
4 date, taking into account the times for service, notice and response as set forth in the  
5 Federal Rules of Civil Procedure. All disputes concerning discovery shall be brought  
6 to the attention of the Magistrate Judge no later than forty-five (45) days following  
7 the date upon which the event giving rise to the dispute occurred. Counsel are  
8 required to meet and confer regarding all discovery disputes pursuant to the  
9 requirements of Local Rules 16.5(k) and 26.1(a).

10 3. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served  
11 on all parties on or before **February 28, 2014**. Any contradictory or rebuttal  
12 disclosures within the meaning of Rule 26(a)(2)(D)(ii) shall be disclosed on or before  
13 **April 7, 2014**. Unless otherwise stipulated by the parties, the required expert  
14 disclosures shall include an expert report as required by Rule 26(a)(2)(B). If a written  
15 report is not required, the disclosure must provide the information required under  
16 Rule 26(a)(2)(c).

17 4. All expert discovery, shall be completed by all parties on or before **May**  
18 **16, 2014**. "Completed" means that all discovery under Rules 30-36 of the Federal  
19 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a  
20 sufficient period of time in advance of the cut-off date, *so that it may be completed* by  
21 the cut-off date, taking into account the times for service, notice and response as set  
22 forth in the Federal Rules of Civil Procedure. All disputes concerning discovery shall  
23 be brought to the attention of the Magistrate Judge no later than forty-five (45) days  
24 following the date upon which the event giving rise to the dispute occurred. Counsel  
25 are required to meet and confer regarding all discovery disputes pursuant to the  
26 requirements of Local Rules 16.5(k) and 26.1(a).

27 5. All other dispositive motions, including those addressing *Daubert* issues,  
28 must be filed on or before **June 20, 2014**. Please be advised that counsel for the

1 moving party must obtain a motion hearing date from the law clerk of the judge who  
2 will hear the motion. Motions in Limine are to be filed as directed in the Local Rules,  
3 or as otherwise set by Judge Battaglia.

4 Questions regarding this case should be directed to the judge's law clerk. The  
5 Court draws the parties' attention to Local Rule 7.1(e)(4) which requires that the  
6 parties allot additional time for service of motion papers by mail. Papers not  
7 complying with this rule shall not be accepted for filing.

8 Briefs or memoranda in support of or in opposition to any pending motion shall  
9 not exceed twenty-five (25) pages in length without leave of the judge who will hear  
10 the motion. No reply memorandum shall exceed ten (10) pages without leave of the  
11 judge who will hear the motion.

12 6. A Mandatory Settlement Conference shall be conducted on **July 16,**  
13 **2014** at **9:30 a.m.** in the chambers of Magistrate Judge Mitchell Dembin. Counsel  
14 shall submit **confidential** settlement statements **directly** to Magistrate Judge  
15 Dembin's chambers no later than **July 11, 2014**.

16 Each party's settlement statement shall set forth the party's statement of the  
17 case, identify controlling legal issues, concisely set out issues of liability and  
18 damages, and shall set forth the party's settlement position, including the last offer  
19 or demand made by that party, and a separate statement of the offer or demand the  
20 party is prepared to make at the settlement conference. **The settlement**  
21 **conference briefs shall not be filed with the Clerk of the Court.**

22 All parties and claims adjusters for insured defendants and representatives  
23 with complete authority to enter into a binding settlement, as well as the principal  
24 attorney(s) responsible for the litigation, must be present and legally and factually  
25 prepared to discuss and resolve the case at the Mandatory Settlement Conference.  
26 Outside retained corporate counsel shall not appear on behalf of a corporation as the  
27 party who has the authority to negotiate and enter into a settlement. **All conference**  
28 **discussions will be informal, off the record, privileged, and confidential.**

1           5.       No Memoranda of Law or Contentions of Fact are to be  
2 filed.

3           6.       The parties must comply with the pretrial disclosure requirements of Fed.  
4 R. Civ. P. 26(a)(3) no later than **September 5, 2014**. The parties should consult Fed.  
5 R. Civ. P. 26(a)(3) for the substance of the required disclosures.

6           **Please be advised that failure to comply with this section or any other**  
7 **discovery order of the Court may result in the sanctions provided for in**  
8 **Fed. R. Civ. P. 37, including a prohibition on the introduction of designated**  
9 **matters in evidence.**

10          7.       The parties must meet and confer on or before **September 12, 2014**, and  
11 prepare a proposed pretrial order containing the following:

12               a.       A joint neutral statement to be read to the jury, not in excess of  
13 one page, of the nature of the case and the claims and defenses.

14               b.       A list of the causes of action to be tried, referenced to the  
15 Complaint [and Counterclaim if applicable]. For each cause of action, the order shall  
16 succinctly list the elements of the claim, damages and any defenses. A cause of  
17 action in the Complaint [and/or Counterclaim] which is not listed shall be dismissed  
18 with prejudice.

19               c.       A list, in alphabetical order, of each witness counsel actually  
20 expect to call at trial with a brief statement, not exceeding four sentences, of the  
21 substance of the witnesses' testimony.

22               d.       A list, in alphabetical order, of each expert witness counsel  
23 actually expect to call at trial with a brief statement, not exceeding four sentences, of  
24 the substance of the expert witnesses' testimony.

25               e.       A list, in alphabetical order, of additional witnesses, including  
26 experts, counsel do not expect to call at this time but reserve the right to call at trial  
27 along with a brief statement, not exceeding four sentences, of the substance of the  
28 witnesses' testimony.

1 f. A list of all exhibits that counsel actually expect to offer at trial  
2 with a one-sentence description of the exhibit.

3 g. A list of all other exhibits that counsel do not expect to offer at  
4 this time but reserve the right to offer if necessary at trial with a one-sentence  
5 description of the exhibit.

6 h. A statement of all facts to which the parties stipulate. This  
7 statement must be on a separate page and will be read to and provided to the jury.

8 i. A list of all deposition transcripts by page and line, or videotape  
9 depositions by section, that will be offered at trial.

10 j. An estimate for the length of trial.

11 The Court encourages the parties to consult with the assigned magistrate  
12 judge to work out any problems in preparation of the proposed pretrial order. The  
13 Court will entertain any questions concerning the conduct of the trial at the pretrial  
14 conference.

15 8. The proposed final pretrial conference order, including written  
16 objections, if any, to any party's Fed. R. Civ. P. 26(a)(3) pretrial disclosures, shall be  
17 prepared, served, and submitted to the Clerk's Office on or before **September 19,**  
18 **2014** and shall be in the form prescribed in and in compliance with Local Rule  
19 16.1(f)(6). Any objections shall comply with the requirements of Fed. R. Civ. P.  
20 26(a)(3). **Please be advised that the failure to file written objections to a**  
21 **party's pretrial disclosures may result in the waiver of such objections, with**  
22 **the exception of those made pursuant to Rules 402 (relevance) and 403**  
23 **(prejudice, confusion or waste of time) of the Federal Rules of Evidence.**

24 9. The final pretrial conference is scheduled on the calendar of the  
25 **Honorable Anthony Battaglia September 26, 2014 at 1:30 p.m.** The trial date  
26 will be assigned by Judge Battaglia at the pretrial conference.

27 10. The dates and times set forth herein will not be modified except for good  
28 cause shown.

1 11. Plaintiff's(s) counsel shall serve a copy of this order on all parties that  
2 enter this case hereafter.

3  
4 DATED: February 12, 2013

5   
6 Hon. Mitchell D. Dembin  
7 U.S. Magistrate Judge  
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